PUBLIC PROSECUTOR

v.

TEO ENG CHAN & ORS.

HIGH COURT, SINGAPORE
P COOMARASWAMY J
[CRIMINAL CASE NO. 30 OF 1986]
3 NOVEMBER 1987

CRIMINAL PROCEDURE: *Rape - Section 376(2) Penal Code - Offence of rape while putting in fear of hurt - Defence of reasonable belief that woman consented - Whether available under Penal Code - Defence of mistake of fact to be determined under ss. 26, 44, 52, 79 and 90 Penal Code.*

CRIMINAL PROCEDURE: *Procedure - Joint trial of accuseds - Evidence prejudicial to one accused but desired in evidence by co-accused - Whether evidence admissible.*

CRIMINAL PROCEDURE: *Corroboration - "At or about the time the fact took place" - Whether determined by the number of hours or days - More appropriately determined by the terms "first opportunity" or "as speedily as could in the circumstances be expected".*

EVIDENCE: *Burden of proving "mistake of fact" - Exception in s. 79 Penal Code - Burden on accused - To be discharged on balance of probabilities - Former statement of witness - Section 159 Evidence Act - Whether corroborative of witness and not merely showing consistency as in English law.*

In this case, the four accuseds were, at the start of the trial, with the consent of each, jointly tried for an offence of rape committed on 'Kay' having put her in fear of hurt to herself and thereby committed an offence punishable under s. 376(2) of Penal Code (Chapter 224 of the 1985 Revised Edition). The charges against the four accuseds related to events on 4 September 1985 between 8.30 p.m. and 9.10 p.m. and involved the girl who at that time was 16 years and 10 months old. The 1st, 3rd and 4th accuseds were tried on one charge each, whereas the 2nd accused faced two charges, the additional charge which differed in respect of time the charge specifying "at about 8.30 p.m."

Each of the accuseds admitted sex with 'Kay' but denied that it was without her consent and also denied that consent was obtained by putting her in fear of hurt. Each of the accused also denied putting 'Kay' in fear of hurt to herself to commit or to facilitate sexual intercourse.

At the end of the prosecution case, the learned Judge called upon each of the accuseds for their defence and they gave evidence on affirmation from the witness box. The learned trial Judge found the 1st, 2nd and 3rd accuseds guilty of the respective charges against each of them. As far as the 4th accused was concerned, the Court found him guilty of simple rape under s. 375 of the Penal Code read with s. 376(1) of the Code.

Held:

[1] In a case where accused persons are tried jointly, evidence which is prejudicial to one accused but desired in evidence by a co-accused can be received.

[2] A former statement of a witness is corroborative of the witness as provided under s. 159 of the Evidence Act other than merely showing consistency as it applies under English Law.

[3] The expression "at or about the time the fact took place" as provided in s. 159 of the Evidence Act is not limited in terms of hours or days. It is limited by the terms "first reasonable opportunity" or "as speedily as could reasonably be expected".

[4] On a charge of rape under s. 375 of the Penal Code it is no defence for the accused to say that he believed that the woman consented. The decision in the case of *DPP v. Morgan* has no application under the Penal Code.

[5] On a rape charge if an accused claims he had reasonable cause to believe that the woman consented, it is really a defence of mistake of fact under s. 79 of the Penal Code.

[6] Where an accused claims that he had reasonable cause to believe that the woman consented to sexual intercourse on a charge of rape, it must be determined under s. 79 (mistake of fact), s. 90 (which has defined what is not consent), s. 26 (reason to believe), s. 44 (injury) and s. 52 (good faith).

[7] Section 79 of the Penal Code (by reason of a mistake of fact) appears in Chapter IV of the Penal Code which deals with "General Exceptions"). Section 107 of the Evidence Act provides that the burden of proving the existence of circumstances in the Penal Code is upon the accused person and the Court shall presume the absence of such circumstances. The burden of proof under s. 79 of the Penal Code is upon the accused, the quantum of proof to be discharged is on a balance of probabilities and not beyond reasonable doubt.

[8] The Court found that even on this lesser burden not one of the accused had rebutted the presumption of the absence of circumstances enabling them to bring themselves within the exception under s. 79 of the Penal Code.

[9] On a rape charge if the prosecution case was that no physical force was used on the complainant, the absence of injury on her was immaterial.

[10] Section 375 and 376(2) only require 'fear of hurt' and the word 'hurt' bears its ordinary meaning and is not restricted to the types of hurt referred to in s. 319 of the Penal Code.

[11] In the light of these circumstances, the Court found the 1st, 2nd and 3rd accuseds guilty of the respective charges against each of them. As for the 4th accused, the Court found him guilty of simple rape under s. 375 of the Penal Code read with s. 376(1) of the Code.

[1st, 2nd and 3rd accuseds found guilty of rape under s. 376(2) of Penal Code. 4th accused found guilty of rape under s. 375 Penal Code read with s. 376(1) of the Code.]

Cases referred to:
R. v. Miller [1952] 2 All ER 667
Lowery v. R. [1974] AC 85
Haw Tua Tau [1981] CLJ (Rep) 11; [1982] AC 136
DPP v. Morgan [1976] AC 182
Chiu Nang Hong v. PP [1965] 1 MLJ 40
R. v. Cummings [1948] 1 All ER 551

Legislation referred to:
Criminal Procedure Code [Sing], s. 122(6)
Evidence Act [Sing], ss. 8(2), 56, 107, 159
Penal Code [Sing], ss. 26, 44, 52, 79, 90(a), 319, 375, (b), (c), 376, (1), (2)

For the public prosecutor - Ang Sin Teck,DPP
For the 1st accused - In person
For the 2nd accused - Chellappan Joseph
For the 3rd accused - Peter Cuthbert Low

For the 4th accused - Joe Chellam
For the amici curiae - R. Pala Krishnan (Wee Pan Lee with him)

JUDGMENT

P Coomaraswamy J:

You, Teo Eng Chan, are also known as "Ah Chan" and as "David";

You, Sim Ik Ping, are also known as "Seow Ping";

You, Ng Yong Kwang, are also known as "Ah Kwang"; and

You, Yap Ser Yen, are also known as "Kuay Kia".

At the start of the trial, each of you consented to being jointly tried with the other three on the charges respectively against each. The charges against the four of you relate to events on 4 September 1985 and involved the girl who at that time was 16 years and 10 months. Each of you know who she is. For today's purposes, I will refer to her as 'Kay'.

Teo Eng Chan, the charge against you is:

On or about 4 September 1985 between 8.30 p.m. and 9.10 p.m. at the site of Singapore Granite Quarries Limited, Chia Eng Say Road, Singapore, committed rape on Kay having put her in fear of hurt to herself and you have thereby committed an offence punishable under s. 376(2) of the Penal Code (Chapter 103), now Chapter 224 of the 1985 Revised Edition.

Sim Ik Ping, you face two charges. The first charge is that you, Sim Ik Ping on or about 4 September 1985 at about 8.30 p.m. at the site of Singapore Granite Quarries Limited, Chia Eng Say Road, Singapore, committed rape on Kay having put her in fear of hurt to herself and you have thereby committed an offence punishable under s. 376(2) of the Penal Code (Chapter 103), now Chapter 224 of the 1985 Revised Edition.

The second charge is that you, Sim Ik Ping on or about 4 September 1985 between 8.30 p.m. and 9.10 p.m. at the site of Singapore Granite Quarries Limited, Chia Eng Say Road, Singapore committed rape on Kay having put her in fear of hurt to herself and you have thereby committed an offence punishable under s. 376(2) of the Penal Code (Chapter 103), now Chapter 224 of the 1985 Revised Edition.

You, Ng Yong Kwang, on or about 4 September 1985 between 8.30 p.m. and 9.10 p.m. at the site of Singapore Granite Quarries Limited, Chia Eng Say Road, Singapore, committed rape on Kay having put her in fear of hurt to herself and you have thereby committed an offence punishable under s. 376(2) of the Penal Code (Chapter 103), now Chapter 224 of the 1985 Revised Edition.

You, Yap Ser Yen, on or about 4 September 1985 between 8.30 p.m. and 9.10 p.m. at the site of Singapore Granite Quarries Limited, Chia Eng Say Road, Singapore, committed rape on Kay having put her in fear of hurt to herself and you have thereby committed an offence punishable under s. 376(2) of the Penal Code (Chapter 103), now Chapter 224 of the 1985 Revised Edition.

The material parts of s. 376(2) read:

> Whoever, in order to commit or facilitate the commission of an offence of rape against any woman:
>
> (a) ...

(b) puts her in fear of ... hurt to herself ..., shall be punished ... (and the punishment specified has a minimum term of eight years and a maximum of 20 year of imprisonment and caning of not less than twelve strokes).

The offence of rape is defined in s. 375 of the Penal Code.

The events this trial was concerned with took place off the main road from suburban Singapore to Johor Baru. This road starts off as Bukit Timah Road and after Bukit Timah Village at the 12 km - stone (or 7 ms) it continues as Upper Bukit Timah Road until Bukit Panjang Village. From here northwards, the road is Woodlands Road. It is throughout a dual carriageway with U-turns being provided at appropriate intervals.

I will first state the prosecution case.

As I stated, Kay was 16 years and 10 months in September 1985. Her evidence was that she lived in a kampong house to which access was by a road which came off Woodlands Road near the 18 km-stone (or 11 ms).

She worked at Chin Chin Snack Bar which is at Bukit Timah Shopping Centre. Her duties involved serving customers at the snack bar as well as taking food for delivery to places in the shopping centre. She worked from 10.30 a.m. to 7.30 p.m. and had one day off per week. In 1985, her off-day was Monday.

Of the four of you, the first person who had any encounter with Kay was Teo Eng Chan (Teo).

On Sunday, 1 September 1985, Teo stopped her while she was serving customers, identified himself as David and indicated he wanted to be her friend. He asked her for her telephone number. She was reluctant to respond and continued to serve food at tables in the snack bar. She went back to the counter and as she was leaving to serve food, according to her Teo obstructed her way and kept pestering her. She had a tray with a bowl of hot noodles on it and afraid of the noodles getting cold, she gave Teo her telephone number and a nickname by which she was known. Further, she felt it was not good to offend a customer.

At 10 p.m. that night, Teo called her on the telephone and as the next day was a Monday, it was her day-off, Teo invited her to a film show. She said she did not accept Teo's invitation whereupon Teo told her if she decided to accept, she should wait for him at the Kentucky Fried Chicken outlet at the ground level of the Bukit Timah Shopping Centre.

Teo met her there and took her to see a film in a cinema at Bukit Timah Shopping Centre after which he took her to the flat of PW17, Ang Teck Boon, who is also known as "Ah Boon". This flat is in a neighbouring building complex, the Beauty World Centre. Before going to the cinema, Teo had met Ah Boon and had a conversation with him out of Kay's hearing.

I was of the view that the evidence of what transpired in the flat could possibly be prejudicial to Teo, not relevant to the charges the accused faced and therefore inadmissible but Counsel for the other three accused (unlike the prosecution) wanted the evidence in. They said it supported the case of their respective clients and that it was essential to their respective defences. Counsel for Sim described it as going to the root of Sim's defence.

As Teo was unrepresented, the Law Society at my request sent two Counsels, Mr. R. Pala Krishnan and Mr. Wee Pan Lee to argue as *amici curiae*, for Teo on the question of admissibility of this evidence.

There is no provision in the Evidence Act dealing with the point before me and I sought

guidance from cases in other common law jurisdictions. In *R. v. Miller* [1952] 2 All ER 667, Devlin J allowed an accused's Counsel to cross-examine a prosecution witness although the evidence forthcoming showed that the co-accused had a previous conviction. In *Lowery v. R.* [1974] AC 85, the Judicial Committee upheld a decision of the Supreme Court of Victoria allowing evidence prejudicial to one accused to be tendered by a co-accused as it was essential to the defence of the accused tendering the evidence. Except for s. 56, s. 54 in Malaysia, there is nothing in the Evidence Act against the applicability of these two decisions in Singapore.

It will be useful for me to quote from Devlin J in *Miller*. He said that it was the duty of defence Counsel "to adduce any evidence which is relevant to his own case and assists his client, whether or not it prejudices anyone else" (at 669-A). He then went on at 669-C:

> to make clear how far my ruling goes. First, it does not open the field to any question of this kind by Counsel for an accused person against the character of another accused. It is admissible in the present case because it happens to be relevant. ... Secondly, while Counsel for the defence is not bound by the same considerations of restraint that would affect Counsel for the prosecution in such a matter, care ought to be taken not to go any further than is strictly necessary for the proof of the relevant point on which the defence desires to rely. In such a matter the Court is very much in the hands of Counsel. I have indicated that at this stage, proof of where Harris (one of the accused) was at a given period during the conspiracy appears to me to have relevance, but I think that Counsel for the defence ought to follow, so far as possible in the very different circumstances of appearing for the defence, the same restraint as Counsel for the prosecution would, and ought not to introduce material of this sort further than is necessary or unless it is strictly required for the purpose of his case. Thirdly, I think that any question of this sort that is being asked by Counsel for one accused that will affect the other accused ought to be communicated to Counsel for the other accused in advance, so that he may consider whether he desires to take any objection to it.

As for s. 56 of the Evidence Act, I wish to make two observations. Justice requires the interests of his three co-accused override that of Teo. Further, the interest of Teo can be preserved and justice done by the exclusion from my mind of this evidence insofar as it went to show disposition or propensity on Teo's part.

After hearing argument, I decided, guided by the cases of *Miller* and *Lowery*, and what I said in the previous paragraph, to admit the evidence after warning myself that I will not permit the evidence to have any influence on me as far as Teo was concerned to the extent that it showed previous bad conduct, propensity, disposition or that he is the sort of person likely to commit the offence or that it showed a previous attempt by him to have sexual intercourse with Kay or that he had previously indulged in familiarities with her.

After the film show, Teo and Kay went to the flat of Ah Boon where he and a few friends were playing mahjong. Teo watched the mahjong playing for a while and spoke to the players. Kay told Teo she wanted to go home but he said he had something to tell her. He asked her to accompany him to a room as it was noisy and there were people around. There was also some music.

He then took Kay to a bedroom in the flat and after standing near the window for a while, Teo wanted to shake her by the hand but she declined. After persistence by Teo, she shook his hand. Teo told Kay to sit on a bed. She could not sit on a chair as the only chair in the room had a portable fan on it. He told Kay he wanted to be her steady friend. Teo then pushed her onto the bed. Amongst the things that Teo did were to stroke one of her breasts by lifting her brassiere. She tried all the time to push off his hand. Her blouse that day was

one, the lower part of which fell outside her skirt. He also tried to pull down her panties. She resisted but Teo managed to pull them down a short distance whereupon she stood up and straightened her panties. Teo asked Kay to sit on the bed for a talk. Her attempts to leave the room were obstructed by Teo. While she was sitting on the bed, Teo used force to push her onto the bed. Her requests that she be allowed to go home were resisted by Teo who said it was too early.

There were two spells on the bed when according to Kay, Teo lay on the half side of her body. Teo tried to kiss Kay. After she stood up and placed her panties in order, she went to the door but Teo pulled her to the bed and lay on top of her for about 15 minutes. She showed her anger whereupon Teo got up and left the room saying he was going to take a bath. He asked her to wait in the hall. In the course of this encounter and his efforts to kiss her, Teo kissed her on the neck and sucked her skin in, leaving a mark which was described as a "love-bite". She was not aware of his efforts at this as she was concentrating on efforts to prevent him pulling her panties down.

After the encounter in the bedroom, Teo had a shower while Kay was in the hall where the mahjong players were. Teo and Kay left the flat and each went home.

The other three accused endeavoured to make the point that Kay was cooperative with Teo in his efforts and made no attempt to leave the room, or later, the flat, or to complain to those who were playing mahjong. I do not regard Kay's conduct as unusual. She said that she went with Teo to the flat in order to get to know him better but she did not know what he was up to. However, she successfully resisted his endeavours and each went home after they came down the lift from Ah Boon's flat.

The next day, Tuesday 3 September 1985, Ng Yong Kwang (Ng) came to the snack bar for a cup of coffee and teased Kay about the love-bite on her neck. She had seen Ng before but that was their first meeting. She did not know Ng's name or nickname. She first came to know that he was Ah Kwang on 15 September 1985 when she was shown a photograph of him by two women who claimed to be his sister and his friend.

Ng's second encounter with her was the next day, Wednesday 4 September 1985 when about 4.00p.m. Kay saw Ng near a toy machine in the shopping centre. He asked her for her name and telephone number and kept blocking her way. She gave him her nickname and telephone number.

After work that day, she was on her way home and Ng met her at the second level escalator. He called out to her and she told him that she was going home. He said it was too early and that he had a friend who would offer her a lift. He invited Kay for a chat and they went towards the staircase.

There was a group of people near the staircase. In this group were Ah Boon and his girlfriend (PW15, Christina Lim Hwee Meng) and Sim Ik Ping (Sim) whom Kay had not met previously. Kay did not come to know of his nickname of "Seow Ping" or his name till 12 September 1985 when two women who claimed to be his mother and wife approached Kay and her mother in connection with what happened on the night of 4 September. They were identified by Kay in Court. Sim's Counsel said he would call them as witnesses for the defence but he did not.

Once again Kay said that she wanted to go home as her mother would scold her if she was

late but Ng replied that it was too early and that his friend would send her home in a lorry. A major part of Kay's evidence on Ng's request and her response was confirmed by Ah Boon.

Later that evening, the persons involved were near a lorry in an open-air car park near the Bukit Timah Shopping Centre. I need not go into details by which they ended up in the car park. There are minor differences of evidence on these details but to my mind, they make no difference to the prosecution case or to the credibility of Kay or Ah Boon.

According to Kay, Sim, Ng and Yap Ser Yen (Yap), who was unknown to Kay, boarded the cabin of the lorry first. She was asked to board the cabin by Ng or Yap but she told Ng she wanted to take the bus. She was told it was quicker by lorry. Around this time, Teo approached and boarded the cabin. They kept asking her to board the cabin and she finally did.

Liew Kuek Hong (PW7) was the owner of the lorry bearing registration plate XA-2980-T. He employed Sim as its driver and Sim was permitted to drive the lorry home after work and return with it in the morning.

The cabin of the lorry had three seats in front, the driver's seat and two others. To the rear of this was a small bench. Sim was in the driver's seat. Teo was in the middle seat. At the suggestion of Sim or Ng, Kay sat in the middle seat between the thighs of Teo. She denied she sat on Teo's lap with his hands on her things. She said her arms were resting on the dashboard and she was leaning forward. This was to enable her to show Sim the way to her home. Though embarrassed in having to sit as she did with Teo, she felt she could not tell the others about what happened on Monday evening in Ah Boon's flat. There was no contact of her upper body with Teo, Kay said. She did not sit in the rear because she was told it was dangerous. Ng sat on the bench in the rear of the cabin. From the car park, Sim drove the lorry off heading as far as Kay was concerned for the turn-off which will lead to Kay's house.

At some point past the 14 km - stone (9 ms), Ng told Sim that he wanted to go to his friend's house but Kay asked that she be sent home first. The response was that it was still early and the suggestion was made that Kay should go to Ng's friend's house before they took her home.

Sim then made a U-turn and headed back towards Bukit Timah Village and turned left into Chia Eng Say Road, a side road near an overhead railway bridge. After this road was a muddy road and they reached a point where there were a few houses and some barking dogs. Ng told Sim to stop the lorry. This was near a temple. Some effort was made by Ng to look for his claimed friend from the cabin but he did not leave the lorry to do so. Sim then drove the lorry on and finally stopped in a quarry belonging to Singapore Granite Quarries Ltd. There were no houses around and the terrain was uneven with crevices at the edge of the quarry and high ground around. This was Kay's evidence and her description matches the photographs of the location tendered by the prosecution. She also said it was very dark.

The locality and her being the only girl made her frightened. She said she was frightened when one of the four men asked her to get down from the cabin of the lorry.

Yap was the first to alight, followed by Sim and Ng. Kay was again asked to come down for a stroll and told she would soon be sent home. She eventually alighted and stood beside the lorry, not far from Yap with Ng nearby. Sim boarded the lorry and was in conversation with Teo who had then not alighted from the cabin, one door of which was open. Kay out

of fear was crying and told Yap that she wanted to go home.

She overheard some of the conversation between Teo and Sim. She heard Teo asking Sim where the newspapers were and was told by Sim not to dirty the seat. She did not know what was meant exactly by this conversation but she felt something was going wrong. She kept on crying and repeated her request to Yap that she be sent home.

Sim then alighted from the cabin and asked her to go into the cabin as Teo had something to say to her. She did not respond and Sim told her that if she wanted to go home, she had to go up to talk to Teo. She then boarded the cabin. When Teo wanted to close the door of the cabin, she told him she was frightened and wanted to go home. He said he would send her home after he had sex with her. She said no and he responded by threatening that he would call the others up. She asked him not to ask the others up. Teo was angry when she said that she would not permit any sex. He got down and was seen by Kay talking to the others.

After a while, someone, whose identity Kay did not then know but who she later recognised the person as Sim (but not by name), got into the cabin and shut the door. He told her that he was going to send her home after she had sex with him. She refused and said, "I don't want". Kay described his reaction as not fierce in the early stages but more and more fierce later. He abused her in the Hokkien dialect with the filthiest possible expression. She was frightened and was crying. He shouted to her, "Don't cry". He threatened to beat her if she continued crying.

Sim then asked her to strip completely. She said she would not and he threatened to ask the others to come up to strip her completely. He then asked her to take off her trousers. He threatened to beat her. He asked her once again to take her trousers off and upon her refusal, he asked her how he could have sex with her if she did not. He again asked her, threatening to take her trousers off if she did not.

Out of fright, she undid the side fasteners of her trousers and pulled the zip down. She then pulled her trousers down halfway, taking about two minutes to do all this. Besides fear of Sim, she was afraid that if she did not and he took off her trousers forcibly, the trousers might be damaged and she would have no trousers to go home in. Sim pulled off her trousers, shoes and panties and put them on the floorboard near the passenger seat.

He then asked her to take off the long-sleeved T-shirt she was wearing but she declined. He asked her to lie down and threatened that he will ask the others to come up and force her to lie down if she did not. He then asked her where her vagina was and she said she did not know. She declined Sim's request that she touch his penis.

He then forced his penis into her vagina and she cried and screamed with pain. She tried to push him away and move backwards because of the acute pain in her vagina. It was obvious that she was a virgin and this was her first sexual experience. I mention this merely in passing and without it influencing me in any way because a complainant being a virgin or not and this being her first sexual experience or not makes no difference to a charge under s. 375 or s. 376 of the Penal Code. She cried loudly and Sim said that it was no use crying loud as no one could hear her. This was because the windows of the doors to the cabin were up. Pushing herself backwards she could not go further back. His penis came out of her vagina. He stood up, pulled her forward and inserted his penis once again into her vagina. After about five minutes, he got up and left the cabin. She groped on the floor board for her trousers and panties but could not find them. Her shoes, however were there.

She then seated herself with her legs together when Ng got into the cabin naked from the waist down. She asked him for her trousers and he said he would give them to her after she had sex with him. She declined. She cried and he became more and more aggressive. He sounded fierce and abused Kay but she could not recall the words. She declined his request that she lay down and he threatened to ask the others to come up if she failed to respond. He also threatened to throw her out of the cabin if she did not lie down. He pulled her limbs apart and inserted his penis into her vagina. She felt pain and screamed and cried out but he nevertheless continued and completed the sex act. She felt very sticky after ten minutes of insertion and withdrawal by Ng. After the act, he left the cabin naked.

She had not earlier recognised Ng. She did later by his body size, which she described as wider than that of the others.

About a minute later, Sim came up again. She still did not know who he was but recognised him as the earlier visitor by his voice. He was only wearing his underwear. Upon her refusing his request that she lay down, he pushed her down, spread apart her legs with force and for the third time inserted his penis into her vagina.

In response to her screams, he asked her to stop or else the rest would come up and see what was happening. After a while, he got up, put on his underwear and alighted.

Teo then boarded the cabin and upon Kay asking him to send her home, Teo said that if she did not have sex with him, she would not be sent home. In doing this, Teo told her she was asking for trouble. She described his appearance as fierce. He abused her in Hokkien. She could not recall the words. Teo also threatened to beat her if she refused to lie down. He gave her some tissue paper to wipe her private parts. She did so. Teo again asked her to lie down and threatened to push her down if she refused. He the pulled apart her limbs and laid them around his waist. He then inserted his penis into her vagina. During the act, he did not lie down on her and once again she screamed because of the pain. After he stopped pushing his penis in and out of her vagina, he left the cabin and she found her vagina very sticky. Teo did not close the door.

She then heard Yap being called by the others to board the cabin. He was obviously reluctant and said that he dared not go up, telling them that it was his first experience. He shut the door and undressed himself totally. She pleaded with him to spare her and not to have sex with her. He said that if he did not, the others will come up and she will be in trouble. She refused his request that she lie down whereupon Yap told her that the other three would keep a lookout and would come up. She felt helpless and realising she had no choice but to lie down, she lay down. Yap then pulled apart her limbs and inserted his penis into her vagina. She felt pain, screamed and cried.

He tried to kiss her but she turned her head away. Before Yap completed the act, Sim boarded the cabin and switched on the cabin light. Upon this happening, Yap withdrew his penis from her vagina, got up and left the cabin. Ng then boarded the cabin, followed by Teo who handed her clothing to her.

Yap then got back into the cabin.

Sim started the engine and switched on the air-conditioner. Kay ignored Teo's query if she was happy. She heard Teo or Ng ask Sim if he had any tissue paper for Kay to wipe herself.

Having by now received her trousers, she got some tissue paper from her trousers pocket and wiped her private parts, put on her panties and trousers. While she was doing this, Sim started driving the lorry. Before the lorry approached Upper Bukit Timah Road, Kay heard

Teo or Ng asking Sim if he had any perfume. Sim took out a bottle and either Teo or Ng sprayed the perfume on her T-shirt. In the course of the spraying, she was told, she said, that this would prevent her mother detecting any male odour on her.

Instead of driving northwards to her home, Sim drove the lorry to Bukit Timah Village where Teo, Ng and Yap alighted. Sim then drove towards Woodlands. During the journey, he told her that she had a beautiful body but that her breasts were small. He asked her for her telephone number but she refused to give it. He also told her not to tell her relations or the police about what took place. If she did, Teo and the others will look her up and that could result in harm to her. She was frightened and remained silent.

Sim again asked her for her telephone number saying he could get it from Teo if she refused. Sim gave her a pencil or pen and a piece of paper and she wrote her number down. He dropped her close to her house in a lane off Woodlands Road. She got down and walked home where her mother was waiting for her at the door. She did not reply her mother's questions as to where she had been and why she was so late.

She denied any reference to contraceptive pills or an offer of them by any of the four accused that evening.

Once home, Kay went to her room, took some clean clothing and went to the bathroom to take a bath. Whilst undressing in the bathroom, she noticed blood on her panties and put them in a pail of water. She then hung up her T-shirt in the bathroom and later her trousers in the bedroom. Having finished her bath, she sat on a chair in the sitting room wondering about the events of the day.

Her mother went to the bathroom and queried her on why her T-shirt smelt of perfume. She did not reply. On her mother's instructions, she returned to the bathroom and soaked her T-shirt. She did not reply to any of her mother's questions on who applied the perfume and whether it was a man. Indeed, she did not reply to any single question from her mother. Soon after that she went to bed. She had a nightmare and she dreamt about the accused persons preventing her from going to the police station to make a report. She lay awake for a considerable time.

She became conscious of the likelihood of pregnancy in the early hours of the morning. Sometime after daylight, she washed herself and left the house at about 9.45 a.m. without telling her mother anything.

She was strenuously cross-examined on why she did not flee from the cabin of the lorry at the quarry, on why she remained in the lorry when it left the quarry with the accused, on why she did not alight when Teo, Ng and Yap were dropped off at Bukit Timah Village, on why she traveled alone with Sim to go home from Bukit Timah Village and on why she gave her telephone number to Sim on that journey. To each questions on these topics, she gave perfectly rational, valid and acceptable answers.

Kay made no complaint when at home that night. She described her father as illiterate and one who did not care for his children. She was not close to her sisters or mother and did not answer her mother's questions as to why she was late and why her T-shirt smelt of perfume. Her mother questioned her in an angry voice. Her mother's evidence was that Kay was close to her and to her sisters. I preferred Kay's evidence on this as no mother would like lack of closeness with a child or between one child and siblings to be known outside the family.

Kay also said she did not discuss the question of a report to the police with members of her family because she did not think of it and in any event felt she should solve her own problems. She also did not know how to go about making a police report.

The lack of physical injury (except for tears of her hymen) was no evidence that she consented. There was no allegation that physical violence was used on her. The prosecution's case was that she was forced into submission by threats of hurt and nothing more. The lack of physical injuries was therefore neither here nor there. The case was that by threats of hurt she was overawed into submission to non-consensual intercourse. Her evidence substantiated this.

She went straight to the Dr. Maurice Chew Clinic and Surgery in Bukit Timah Shopping Centre after she left home at 9.45 a.m. on Thursday, 5 September morning. She asked the nurse there for contraceptive pills as she was afraid of pregnancy. As stated above, this fear arose in her mind early that morning. The nurse referred her to a Dr. Chua Chong Li (PW20), a woman doctor whose evidence was that Kay came in full of tears. Dr. Chua asked her what the matter was and she replied that she was subject to "loon chien" which is the Mandarin term for gang rape.

In response to Dr. Chua's questions, she told her in detail what transpired. When Dr. Chua asked her if she would like to make a police report, she said yes but did not know how to go about it. Dr. Chua offered to write a note for her to take to the police station but it was up to her whether she wanted to make a report or not. Dr. Chua then handed her a note in an envelope. Dr. Chua also made a cursory examination of her but did not make a detailed examination of her private parts because she did not have the facilities for a proper examination and in any event felt that Kay should be examined by a specialist at a hospital. Her evidence of her visit to Dr. Chua had earlier confirmation by Dr. Chua who also said Kay was full of tears when she came into her room. Kay's evidence was that even if the nurse had given her contraceptive pills, she would have asked the doctor on how to make a report to the police.

Dr. Chua's record of what Kay told her had some differences as to the location of what Kay said the accused did to her. These are easily explained by language problems. In any event, the three points of difference (factory instead of quarry, storeroom instead of cabin of a lorry and Dr. Chua's use of the words "friends" to describe the four persons who were in the lorry) were not areas of dispute or challenge as to location or identity by any one of the accused. These differences were to my mind immaterial.

In his evidence, Ah Boon said he had known Teo, Ng and Yap for some time before 4 September 1985. He had seen Kay at work and he described her as a quiet girl.

PW18 was Chew Soon Leong who is also known as Ah Leong. He had known the four accused before 4 September. He had also seen Kay working at the Chin Chin Snack Bar and had seen her talking to Teo. He was also at Ah Boon's flat on Monday, 2 September 1985, playing mahjong when Teo and Kay came to the flat.

On 4 September, he was at various times with one or more of the four accused and Kay in the Bukit Timah Shopping Centre and on the way to the car park. He left them shortly before they walked to the car park. Before he left, he heard Kay telling the group she wanted to go home when one of the four accused said they had transport to send her home.

Having spent some time with his girlfriend, Ah Leong sent her home and returned to Bukit Timah Shopping Centre where he went to the hawker centre for supper with some friends.

Teo, Ng and Yap were at the same table. Teo told Ah Leong and his friends that the four of them had sex with Kay in Sim's lorry before she was sent home. Ah Leong was also told by one of the three that Kay put up a struggle and they had difficulties in having sexual intercourse with her. Other details of the evening were also mentioned. In answer to Sim's Counsel's question in cross-examination "Did one of the three tell you Kay put up some resistance?". Ah Leong's answer was, "Yes, a little resistance". The important point was that even if only one of the three said what was said, it was said in the presence of the other two who did not contradict the speaker.

Each of the accused gave a statement to the police recorded in compliance with the provisions of what is now s. 122(6) of the Criminal Procedure Code (CPC). The statements were made to PW23, Detective Sergeant P. Avadiar (D/S Avadiar). Each was made in Hokkien and interpreted to D/S Avadiar by PW22, Miss Liu Chee Kwan (Liu), a certificated Chinese interpreter. No inducement, threat or promise was made to any accused at any time and no objection to the voluntariness of the respective statements was made when each was tendered. At a later stage, Teo said he was hit or threatened to be hit on the head with a ruler by D/S Avadiar.

After a *voir dire* in which Teo, D/S Avadiar and Liu gave evidence, I came to the conclusion that there was no breach of the provisions of **CPC, s. 122(6)** in its recording and that his statement was voluntary. I therefore did not reject Teo's statement.

Teo and Yap, who were arrested on 8 and 9 September 1985, had their statements recorded on 9 September. Their statements were very brief. Sim and Ng, who surrendered to the police on 13 and 15 September respectively, made lengthy statements.

Teo's statement was in full, "I admit committing the offence and plead for leniency."

Sim in his statement also admitted committing "the offence" with the other three accused on the night in question. He went to great detail as to the events of the evening stating that it was Ng who asked him to send the girl home. On learning that her house was on his way home, he agreed.

All boarded the lorry and he drove off but somewhere near Hillview Road, Ng suddenly asked him to make a U-turn to look for a friend. On Ng's direction, they ended up where they did, realising then what they were up to. He became worried and asked Teo if Kay would give in. Teo told him not to be worried as he had done it with her previously. All alighted except Kay, but Teo went into the cabin to speak to her. Teo alighted and told the others they could go up first. Sim said he was the first to board the cabin to have sex with Kay and he noticed that she looked frightened. He took out the girl's trousers but she did not resist. She complained of pain during the act. However, his penis turned soft and on Teo's request, he got out.

Teo then said that Ng should do it first. Sim did so again after Ng came down from the cabin. The others took their turns and as he drove the lorry off, he told them he would drop them on the main road for them to take a bus to Bukit Timah Village. Teo, however, threatened him with a stabbing if he did not take them to Bukit Timah Shopping Centre first. He had no choice but to drop the other three men at Bukit Timah Village and then took Kay home. During the journey, he further said that Kay expressed fears about pregnancy. He asked her if he could get her some contraceptive pills. This led to her giving him her home telephone number.

He deeply repented what he had done and hoped for leniency, promising to turn over a new leaf. He also thanked the Judge in advance for mercy.

Ng in his statement said that Teo had told him and the other two accused that he had sex with Kay before. According to him, it was Teo who asked if anyone had a car. Sim replied he had a lorry in the car park. The offer of a lift home to Kay came from Teo. At the destination, Teo was left with Kay in the cabin and the others alighted. Teo then came down and told the others to go up first. Ng took his turn after Sim. After all had sex, they left in the lorry. Ng confirmed Teo's threat to Sim that the other men should be sent to Bukit Timah Village first before Sim sent Kay home.

Yap's statement was also short. He denied raping Kay but admitted having sex with her. He also said she gave in willingly and that he was persuaded and pushed by the others into the cabin to have sex. Except for Yap's mention that Kay give in willingly, none of the statements contained anything that indicated consent on the part of Kay.

At the end of prosecution case, I had no hesitation in calling upon each of the accused for his defence. In my view, the prosecution case went much further than the minimum requirements laid upon by the Judicial Committee in *Hwa Tua Tau* [1981] CLJ (Rep) 11; [1982] AC 136.

Before I refer to the case put up by each of the accused, it is appropriate that I briefly set out the law on the offence with which each accused is charged.

The offence on which each was charged is committed by an accused if:

(i) he had sexual intercourse with Kay (section 375, Penal Code);

(ii) that this was without Kay's consent or, if it was with consent, the consent was obtained by putting her in fear of hurt (s. 375(b) and (c)); and

(iii) that he put her in fear of hurt to herself in order to facilitate what he did under (i) and (ii) above (s. 376(2)).

On element (i), I had no hesitation in believing Kay and her evidence, not only on my assessment of her credibility but also because this was not challenged by any of the accused when each respectively cross-examined Kay. Further, in each of their statements to the police, sexual intercourse was admitted. She was challenged only on elements (ii) and (iii) and I have already adverted to her evidence on these elements.

Each of the four accused decided to take the witness box and give evidence on affirmation.

Toe's evidence was that Kay readily agreed to be his friend at their first encounter after she smiled at him. She followed this up by giving him her name and home telephone number after arranging to meet her outside the snack bar. When he called her on Sunday, 2 September night, she readily agreed to go to a film show with him the next day, her off-day. There was not much difference between his evidence and hers to what transpired at the Bukit Timah Shopping Centre on the Monday prior to their going into a bedroom in Ah Boon's flat.

As to the Wednesday, his evidence was that he was with the group that met her earlier at Bukit Timah Shopping Centre. He, however, had to leave to go somewhere else. At about 8.10 p.m. he went to a newspaper stall near the Beauty World Centre and saw them there. By "them", he meant Ah Boon, his girlfriend, Ng and Kay and he claimed he spoke to her there. He then followed behind them to the car park while Ng remained with the newsvendor.

Teo admitted that he, Sim and Ng had at about 7 p.m. discussed the idea of taking Kay to the quarry. This was outside the Kentucky Fried Chicken outlet at Bukit Timah Shopping Centre before Kay finished work for the day.

They got to near the lorry where Sim opened its door and got in, followed by Ng. He went in after her and, Yap was the last. This sequence, I find difficult to believe. It meant that Kay had sat first and had to move to enable Teo to sit virtually under her as his version was she sat on his lap with his hands on her thighs. Not only that, in cross-examination by Sim's Counsel he was not sure if any of the other three accused told her it was dangerous to sit in the rear of the cabin. After the lorry turned into Chia Eng Say Road, he could not recall if the reason why Ng asked Sim to stop the lorry was for Ng to look for a friend.

He also could not recall what he and Kay spoke about when they were in the cabin alone after it stopped at the quarry. Teo said that he did not tell Sim that Kay was willing to have sex with Sim. He said it merely occurred to him that she was willing but it was up to Sim and Kay. He denied telling Sim that all Kay wanted was contraceptive pills. He admitted telling the others before Sim boarded the lorry at the quarry for the first time that he had sexual intercourse with Kay before. He frankly acknowledged this was a lie. In his own words, "I bluffed them". However, he denied telling Ng that earlier he had told Ng at the Bukit Timah Shopping Centre that he had previously had sex with Kay.

He also denied that on the evening of 4 September at Bukit Timah Shopping Centre he told Ng that he could persuade Kay to have sexual intercourse with the others and that it was pursuant to this that Kay was brought to the quarry. He said that bringing her to the quarry was the result of a "discussion" between him, Sim and Ng that evening but during this discussion he did not tell them that he could persuade Kay to have sex with them. He also denied more than once telling the others at the quarry that Kay had agreed to have sex with them or that all Kay wanted was contraceptive pills.

Teo admitted asking Kay for sex but that her response was that he should give her contraceptive pills if he wanted sex. When he alighted from the cabin, he told the others Kay was a "loose" girl but not that she consented to have sex with each or any of them.

On his boarding the cabin before he had sex with her, he admitted she asked that she be sent home. He said that he pushed her down gently after he told her he would get her contraceptive pills. He denied pulling her legs apart or that she tried to push him away. Instead, he said, upon insertion of his penis into her vagina, she embraced him by putting her hands round the back of his neck. There was no screaming or crying by her.

I need not go into much detail but will refer to a few more pieces of his evidence. He denied that he or Ng asked Sim for perfume on the way back or that Sim provided a bottle of perfume which was sprayed onto Kay's T-shirt.

On approaching the main road, he admitted asking Sim to drive first to Bukit Timah Village but denied threatening him to get him to do this.

At the hawker centre, he admitted that he, Ng and Yap joined Ah Leong but not at the same table. Yap, in contrast, said Ah Leong joined them, Teo and Ng at the same table. When the various pieces of conversation with Ah Leong from one of the three were put to him, he said in effect that he did not tell Ah Leong each piece but he did not know if one of the others did. When Yap's statement to Ah Leong that he saved money by having sex with Kay in that he did not have to go to a prostitute was put to him, he replied "Not sure".

Sim said he knew Ng quite well but that he was not too familiar with Teo. On 4 September he responded to a telephone message from one Ah Koo and went in his employer's lorry to Bukit Timah Shopping Centre where Ah Koo has asked him to meet to go to dinner. However,

he did not find Ah Koo. Instead he met Teo and Ng and joined them in conversation. He reported Teo as saying he had a girlfriend with whom they could have sex but he had to speak to her first. Where they should go for sex was also discussed. Ng suggested the quarry. Teo also said he had sex with the girl previously. This was at about 7.30 p.m., according to Sim.

He then roamed about Bukit Timah Shopping Centre on his own but on his way home, he passed the Kentucky Fried Chicken outlet when he saw the group, now enlarged with Kay, Ah Boon and others. He told Ng he was on his way home when Ng asked him to give Kay a lift home. On being told where her home was, he agreed as it was on the way to his own home. Teo was not with them when the group walked to the car park.

The five boarded the lorry's cabin and he drove off in the direction of Kay's home but on reaching the 14½ km point (or 9 ms), Ng asked him to make a U-turn to head for the place where he, Teo and Ng had discussed as the place to have sex with Kay. He was to be directed to the place by Ng. After the stop near the temple, he drove on and stopped the lorry at the quarry. Leaving Teo and Kay in the cabin, he, Ng and Yap went for a walk. Teo called him back to inquire if sex could be had in the back seat to which he said no.

He resumed his walk when Teo approached him and said they could have sex with Kay and Teo asked, "Who wants to go up first?" In response, he boarded the cabin. He claimed that Kay agreed to have sex but was afraid she would have a baby. He agreed to her request that he provide her with contraceptive pills. In cross-examination by Ng's Counsel, Sim said, "I did not ask if she consented. From what Teo told me, to my mind Kay must have consented."

Sim's evidence was that Kay removed her trousers and panties to her knees and he told her he could not have sex with her trousers in that position. He then told her to take them off and she complied. Shortly after he said this in evidence, his Counsel interjected to say that, "He said he brought the trousers down from her knees". He penetrated her when she complained of pain and of someone peeping. He himself did not know if there was a peeper but the abusive words he used were directed at the peeper, not at Kay. At a later stage, he could not recall if the words were directed at Kay or the peeper. Soon after, the penis went soft. He alighted from the cabin in his briefs leaving his trousers in the cabin, having had in his own words, "only sex halfway". He denied there were two separate penetrations.

After Ng boarded the cabin and alighted, Sim boarded the cabin and had sex a second time with Kay. According to him the way he penetrated her was, "Slowly, but not with force". After he finished, he left the cabin in his briefs, holding his trousers but leaving his shirt in the cabin. After Teo and Yap in turn boarded the cabin, he entered the cabin and drove it off after those outside had boarded it.

After he dropped the other three men at Bukit Timah Village, he drove Kay home. She asked him for contraceptive pills and suggested he brought them to Bukit Timah Shopping Centre. He said he seldom went there. He asked if there was a better way and asked her for her telephone number which she provided. He then complimented her on her body but said her breasts were small. He dropped her off near the house.

He stayed mostly away from his home after that but on 12 September his wife told him in a pager telephone call that the police were looking for him. He surrendered to the police the next day.

He explained his statement to the police by saying that when he admitted committing the offence, all he meant was that he had sex with Kay. His repentance was only over having had sex with her. He regretted this because the police were looking for him and that he had to surrender to the police.

He denied threatening to beat her up or making any threat at all as Kay willingly consented.

When he boarded the lorry for the last time before driving off, his recollection was that Yap and Kay were in a sitting position, having completed the act.

In cross-examination, he said he knew Teo only one week before 4 September but in that week had seen him two or three times at the Bukit Timah Shopping Centre. This contrasts with what he told Kay on the return journey on 4 September that he rarely went to that shopping centre. He had known Ng for more than two years. He had been to Ng's house and had once collected old newspapers with him.

He contradicted Teo about movements of Kay in the shopping centre that evening and on Teo having told him that he (Teo) previously had sex with Kay. Although he sat next to Teo and Kay, he did not see Teo's hands on Kay's thighs as claimed by Teo.

At the quarry, he admitted asking Teo not to dirty the cabin but claimed that Kay was in the cabin when he said this. As to the abusive words, he could not remember.

He happened to have a bottle of perfume in the lorry, having picked it up at a rubbish dump. He himself sprayed the perfume on the air-conditioner, not on Kay's T-shirt. The deep repentance he expressed in his statement was because he should not have had sex with Kay.

Certain details of his evidence where he contradicted Kay or Teo were not the subject of cross-examination of these witnesses by his Counsel. Sim's explanation was that he had not instructed his Counsel on these points.

That his mother and wife were not called in spite of Kay's and her mother's evidence on their visit and his Counsel's statement that they will be called was disregarded by me in so far as anything they told Kay or her mother could be looked upon as an admission by Sim.

Sim also called Margaret Ong Bee Keng (Ong), the nurse/receptionist at Dr. Chua's surgery and clinic. She confirmed Kay's request for contraceptive pills on 5 September. She referred Kay to Dr. Chua without request from Kay. Ong described Kay as "not distraught" that morning. This was in direct contrast to Dr. Chua's evidence that Kay was full of tears when she entered her room.

Ng's evidence was that on 2 September at the Bukit Timah Shopping Centre, Teo had told him that he had brought Kay to Ah Boon's flat where he had sexual intercourse with her. The next day he met her at the snack bar and he teased her over her love-bite. According to him, Kay said Teo caused it. I find this very strange in that to my mind, she is not the sort of girl who would volunteer this sort of information to a near-total stranger, if not a total one. Neither did she have any reason to believe that Ng and Teo knew each other.

On 4 September Ng met Teo and Sim at the shopping centre. Ah Boon and his girlfriend were there. In Sim's hearing, according to him, Teo said he had sexual intercourse with the girl (Kay) before. He also quoted Teo as saying that he would speak to Kay and ask her to have sex with him, Sim and Ng. Ng believed Teo.

He went on to say that the decision was made to have sex with Kay. This was subject to Teo speaking to Kay and Kay agreeing.

Later at what he made appear was a chance meeting with Kay, she replied his query by saying she had finished work and was going home. He told her that it was still early and that she should have a chat with him downstairs. He told Kay his friend had a vehicle to send her home. She accompanied him downstairs where outside the Kentucky Fried Chicken outlet, he met Sim. Teo joined them later. There were changes in the collection of persons there. Then in various groups they moved towards the car park via a newsvendor's stall.

He noticed Yap only when, in the car park, he approached the lorry. Sim opened the door and got into the cabin. According to him, the sequence after Sim was he, Kay, Teo and Yap. He acknowledged that it was he who earlier asked Sim to proceed to the quarry. He knew the place for what it was. Teo and Kay remained in the cabin after its arrival in the quarry whilst he and the other two walked away from it. Teo later came down and said he had spoken to Kay. All four walked towards the cabin and Sim went up.

He made an attempt to peep into the cabin when Sim and Kay were inside. Later when Sim alighted from the cabin, Ng quoted Sim as saying that he could not get his penis erect. He then went into the cabin and found Kay lying on the seats with her head near the steering wheel and her legs apart, naked from the waist downwards. He did not ask if he could have sex with her because he said she was bare from the waist downwards. He performed sex with Kay with her complaining of pain and asking him not to use force. She also expressed fear of possible pregnancy but he told her that Teo will get her contraceptive pills. He said this conversation was during the sex act. His act, he said, was completed in five minutes. He put on his underwear and alighted from the cabin after which Sim and Teo took their turns.

According to Ng, when Yap's turn came, he was embarrassed and reluctant to mount the cabin. For this reason and a leg injury, he had to be helped up by Teo. Yap managed to board the cabin in his second effort with Teo's help. Two or three minutes later, Yap called out to Sim and Sim got into the driver's seat. He got into the rear seat as before and Kay was seen by him wiping her private parts with tissue paper. Sim then started the engine and drove towards Bukit Timah Road. Sim's request that the three of them take a bus to Bukit Timah Village was not accepted. Sim dropped Teo, Ng and Yap at Bukit Timah Village.

Ng admitted that it was his idea to go to the quarry as he knew it was deserted and that Teo and Sim agreed that it be the place. To many questions in cross-examination, his answers were he could not remember, he could not recall or he was not paying attention. Ng said that Yap was not party to the discussions on the plan for sex with Kay or the intention to go to the quarry.

Ng's surrender to the police was the result of Sim's brother telling him the police were looking for him.

Yap was a National Serviceman on leave at the time of the events in question.

He had gone to Bukit Timah Shopping Centre on 4 September to collect a loan from a girl called Fei Fei who had asked him to meet her near the Kentucky Fried Chicken outlet for this purpose. He met her, then he visited some shops and then met Teo and later Ah Boon.

At the quarry when it was his turn, he expressed embarrassment and fright. Teo told him not to be frightened and pushed him up towards the door of the cabin. He jumped down with his heart beating very fast. One of them asked if it was his first experience. He responded 'yes' but in evidence he said this was a lie.

Teo assisted him a second time and he went into the cabin fully dressed. He described Kay as normal and there was nothing out of the ordinary. He asked her to lie down. She said she felt pain but he reassured her that he would do it slowly. When he first asked her to lie down, he placed his hand on her shoulder. He took off his trousers and briefs. During the sex act, she complained of pain and asked him not to do it with force. Before he completed the act, Sim opened the door of the cabin and switched on the light to his surprise. He gave no evidence of his calling Sim, as stated by Ng. He got down, put on his trousers and reboarded the lorry after Sim started the engine.

He said there was no threat to Sim to get him to drop the men off at Bukit Timah Village before Sim sent Kay home. When they got off, he, Teo and Ng went to the hawker centre where they found a table at which Ah Leong joined them. According to him before he left, there was no talk of the events at the quarry.

He did not ask Kay if she agreed to have sex with him. He only presumed that she consented and he did not ask her for her consent.

I will now turn to the law and to my findings.

In assessing the evidence on each charge against each accused, I was conscious throughout the trial that this was a joint trial, not a collective trial. At all times, I took care to ensure that the evidence on each charge against each one of the accused must be considered separately and distinctly from the evidence against the others.

I have indicated what the ingredients of the offence with which the accused are being charged. The first element, sexual intercourse, was admitted by each accused. During submissions in the course of the prosecution case and at the end of the case for the defence, it was clear that the defence of each accused represented by Counsel was that Kay consented but if she did not, each had reason to believe that she consented. For this, reliance was placed on the English case of *DPP v. Morgan* [1976] AC 182 where the House of Lords by a majority of three to two held that if an accused in fact believed that the woman had consented, he could not be found guilty of rape whether or not that belief was based on reasonable grounds. Counsel placed heavy reliance on the decision of the learned Chief Justice, Dato' Sri Denys Roberts sitting as a trial Judge in Brunei in the case of *PP v. Zainal Abidin bin Ismail & 3 Ors* (31 Jan 1987, yet unreported). The Chief Justice applied the *Morgan* principle in this case of rape against the accused. Counsel before me relied upon the case of *Zainal Abidin* because the Penal Code of Brunei is, with differences immaterial for present purposes, similar to ours. Section 375 is identical in the two Penal Codes. They therefore argued that I should follow the decision in *Zainal Abidin*.

In my view, the law on consent and mistake of fact are contained in the Penal Code itself. Under Chapter IV dealing with exceptions, consent is defined negatively in s. 90(a). In the light of the defence taken, this provision is applicable to the present case. Under this provision consent is not consent if given by a person under fear of injury and if the person doing the act knows or has reason to believe that such consent was given in consequence of such fear.

For a person to have "reason to believe" a thing, s. 26 of the Penal Code provides that he does so only if he has sufficient cause to believe that thing. The word "injury" which appears in s. 90(a) is defined in s. 44 as any harm whatever illegally caused to a person in body, mind, reputation or property. The word 'mind' needs emphasis in this case.

On the facts before me, I find that Kay did not consent to any of the four accused having sexual intercourse with her in the cabin of the lorry at the quarry. As stated before, I found her to be a credible witness. The surrounding circumstances show that she is extremely unlikely to have consented. On Monday, 2 September she put up strenuous resistance and successfully prevented Teo from having sexual intercourse with her or of making major advances preliminary to sexual intercourse with her on a bed in the privacy of a bedroom in a Beauty World Centre flat. Not merely that, her conduct was such that except for her breast being caressed and her panties being pulled down a short distance, she was able for half an hour to resist any further advances towards sexual intercourse by a single man, Teo, with no other males around. I find it impossible to believe that a girl who did this on Monday could two days later consent to four persons, the first of whom was Sim, a total stranger, having sex with her across three seats in the cabin of a lorry in a dark and deserted quarry. Any contrary view goes against the grain of logic and common sense. Despite what each of the four accused said in evidence, I have little hesitation in believing Kay on the issue of consent.

In their evidence, Teo, Sim and Ng each said that Kay's fear of pregnancy was allayed when each said he would get her contraceptive pills and that this led her to submit. The provision of these pills was also one of the subjects of their conversation when two or more of them were outside the lorry. Sim's evidence was that Kay repeated the request for contraceptive pills when they were alone in the lorry on the way to Kay's home. Teo was free for three full days after 4 September. Sim was free for eight full days. Ng was free for ten full days. Not one of them gave evidence that during these respective periods, they made efforts to get the pills or to provide them to Kay. It must also be remembered each knew where she worked. Each also had her home telephone number. I totally disbelieve the evidence of each when he said that Kay's only fear was pregnancy and that she submitted when told or after she was informed that she would be provided with contraceptive pills. The evidence of each on this is a pure figment of their respective imaginations.

There is every justification for saying that if she appeared to any one of the accused to consent, that consent was negatived by fear of injury to mind, if not to body. There was no consent as required by the provisions of the Code.

The next question for me to consider is whether there was a mistake of fact in the minds of the accused persons when they presumed that she consented. The law on this is contained in s. 79 of the Penal Code which provides that "nothing is an offence which is done by any person ... who by reason of a mistake of fact ... in good faith believes himself to be justified by law, in doing it." Sex with a woman over 14 years with her consent is justified by law, incest aside.

'Good faith' is further defined by s. 52 of the Penal Code which reads "nothing is said to be done or believed in good faith which is done or believed without due care and attention."

In view of these specific provisions in our law, the majority decision of the House of Lords in *Morgan* does not, in my humble view, have any application in Singapore. There is also nothing in the transcript of Dato' Sir Denys Roberts' decision in *Zainal Abidin's* case that he was referred to the provisions of the Penal Code to which I have just referred and will hereafter refer.

Section 79 of the Penal Code appears in Chapter IV of the Code. This chapter deals with 'General Exceptions'. Section 107 of the Evidence Act provides that the burden of proving the existence of circumstances bringing a case within the general exceptions in the Penal

Code is upon the accused person and the Court shall presume the absence of such circumstances.

In the light of the provisions to which I have referred, the burden of proof under s. 79 is upon the accused. Acknowledgedly, the quantum of proof with which this burden is to be discharged, is on a balance of probabilities and not beyond reasonable doubt.

My finding is that even on this lesser burden, not one of the accused has rebutted the presumption of the absence of circumstances enabling him to bring himself within the exception under s. 79. The respective evidence of each was carefully considered by me. So was the respective evidence against each, one separate from the other.

Even without resort to the presumption in s. 107 of the Evidence Act, there was ample evidence for me to hold as a fact that not one of the accused in his respective claimed belief that Kay consented, in good faith believed she consented to his having sexual intercourse with her. If any of them held that belief, my finding is that he did so without due care and attention.

On corroboration, I am fully conscious that I, in the words of the Judicial Committee as "a Judge sitting alone", must:

> make it clear that he has the risk in question his mind, but nevertheless is convinced by the evidence, even though uncorroborated, that the case against the accused is established beyond any reasonable doubt. No particular form of words is necessary for this purpose: what is necessary is that the Judge's mind upon the matter should be clearly revealed.

Chiu Nang Hong v. PP [1965] 1 MLJ 40.

I was quite clear of this risk and kept warning myself of it. On the two issues of consent and fear of hurt, the only two on which corroboration was desirable, I find Kay's evidence more than adequately corroborated. Her statement to Dr. Chua and her use of Mandarin equivalent of the words "gang rape" in that statement within 14 hours after the events are to my mind adequate corroboration. The number of hours is not by itself important. Kay's complaint was made as speedily as could reasonably in the circumstances be expected of her.

I fully appreciate in the case of *Chiu Nang Hong*, Lord Donovan said that corroboration must be independent of the witness' testimony. However, a reading of the penultimate paragraph of that report will show that Counsel for the Public Prosecutor was precluded from argument on the significant differences between the law and practice in England and the law and practice in Malaysia (where the Evidence Act, except for immaterial difference, is identical to that of Singapore) and the desirability of corroboration and as to what constitutes corroboration. This preclusion was because no argument on these issues was submitted to the then Malayan Court of Appeal whose views on the matter were, Lord Donovan said, indispensable to the Judicial Committee.

Our law is contained in s. 159 of the Evidence Act which provides that a witness' testimony may be corroborated by any former statement made by such witness "... relating to the same fact at or about the time the fact took place or before any legal authority competent to investigate the fact". The expression "at or about the time the fact took place" is not to be limited in terms of hours or days. It is limited by the terms "first reasonable opportunity" or "as speedily as could reasonably be expected".

Further, s. 159 must be read with s. 8(2), Explanation 1 and Illustrations (j) and (k) to that section.

Having regard to Kay's youth and inexperience, her evidence of her relationship with her family and her ignorance of ways of making complaints to the police, I accept her reasons for not making a complaint before she saw Dr. Chua. I regard her statements to Dr. Chua as adequate corroboration under our law and going much further other than merely showing consistency.

In *R.v. Cummings* [1948] 1 All ER 551, the facts before the Court of Criminal Appeal in England on the time lapse between event and complaint was somewhat similar to those in the case before me. The girl in that case worked on the land and lived in a camp or hostel for 'land girls'. The appellant, an ice-cream seller, had taken her out in his van somewhat late for a drive to see if they could get some pears in nearby farms. They found no pears. She alleged rape. She was brought back to the camp by the appellant. She did not complain to the warden of the camp, or to a woman welfare officer at the camp who was known to her and who that night had not yet gone to bed. Nor did she complain to the girls who were living in the same hut as she did. However, the next day as early as she could she went from the camp and complained to a woman whom she knew and who lived two miles away. The appellant's objection to admissibility on the ground of lateness of the complaint was dismissed by the Court of Criminal Appeal.

Having regard to English law, that was a case where the complaint was used to prove consistency. In my view, the principles stated by the Court of Criminal Appeal on time lapse are equally applicable for the purposes of corroboration under s. 159 of our Evidence Act.

Kay also made a police report which was recorded in the diary at Tanglin Police Station later that day (5 September). Under s. 159, this is not subject to any time constraint and is equally corroboration of Kay's evidence.

Lastly, as against Teo, Ng and Yap the conversation with Ah Leong in the hawker centre in the course of which one or more of the three of them in the presence of the others said that Kay screamed and cried, struggled and showed a little resistance in my mind also constitute corroboration as against these three accused persons though not against Sim.

It was argued that the absence of injury tended to show consent. That is true where an accused used physical force to get the victim to submit to sexual intercourse. There was no such allegation here. Kay was overawed into submission by the conduct of Teo, Sim and Ng, by the whereabouts of the events, a deserted quarry on a dark night and by the presence of three men outside the cabin when the fourth was alone with her. Before sex, each Teo, Sim and Ng threatened Kay with either or both, a beating or a call to the others to come up. Either of these threats to my mind was more than adequate to put Kay in fear of hurt to herself.

I do not regard these as "idle threats" as Sim's Counsel chose to describe them. He referred to s. 319 of the Penal Code. That section does not define hurt. It states what types of hurt constitute an element in the offences created in the sections that immediately follow it. Sections 375 and 376(2) only require 'fear of hurt' and in my view the word 'hurt' here bears its ordinary meaning and is not restricted to the types of hurt referred to in s. 319.

In the light of the evidence before me, I find as a fact that Teo, Sim and Ng each put Kay in fear of hurt by their various respective utterances immediately prior to each having, without her consent, sexual intercourse with her.

In arriving at these conclusions, I was all the time conscious that as against Teo, I must keep out of my mind evidence of what transpired in Ah Boon's flat on the night of Monday, 2 September.

In answer to Yap's Counsel's question, "Did Yap threaten to harm you?", Kay gave an unequivocable "no" in reply I take this to mean that she did not regard anything that he said as inducing a fear of hurt. She was perhaps then quite exhausted having already had sexual intercourse with three persons and twice with one of them.

In the light of these conclusions, I find Teo, Sim and Ng guilty of the respective charges against each of them. As far as Yap is concerned, I find him guilty of simple rape under s. 375 of the Penal Code read with s. 376(1).

I will now hear the DPP on antecedents of the accused and will listen to submissions by Teo and defence Counsel in mitigation after that.

Also found at [1988] 1 CLJ 425